IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.Rev. No. 72 oF 2001

Judgment reserved on: 13.7.2007

Date of decision: July 20, 2007

Bakshish Singh ….Petitioner

Versus.

State of H.P. …Respondent.

Coram
The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Ajay Sharma, Advocate.

For the Respondent: Mr. R.M. Bisht, Deputy Advocate General.

Deepak Gupta, J.

This petition is directed against the judgment of learned Sessions Judge, Una in Criminal Appeal No. 20 of 1999 decided on 23.4.2001 whereby he has affirmed the judgment of the Chief Judicial Magistrate, Una in Case No.360-1/94 decided on 12.7.1999 convicting the petitioner of having committed an offence under Section 304-A of the Indian Penal Code and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs. 2000/-.

The facts briefly stated are that the accused-petitioner was driving a tanker No.PAT 8990 from Nangal towards Santokhgarh side. According to the prosecution, the accused-petitioner was driving the tanker in a rash and negligent manner

and when he reached at village Ajoli Mor near the barrier, the petitioner could not control the tanker and hit the pole of the barrier. One Sohan Lal was going towards Santokhgarh on his cycle and was just ahead of the barrier. He was hit by the pole as well as by the tanker and sustained injuries and died as a result of the accident. Admittedly, the accident was witnessed by PW1 Joginder Pal who was traveling in the tanker. According to him, the tanker was at a high speed and hit the pole of the barrier. The pole broke and hit the cyclist Sohan Lal who was just a few ahead of the barrier. Thereafter the tanker also hit the deceased and his cycle and stopped about 25-30 steps ahead. According to him, the accident has occurred due to the rash and negligent driving of the petitioner. He, in his cross examination admitted that there were two other persons sitting in the tanker and that the deceased Sohan Lal was his uncle. The other eye witnesses were, namely, PW3 Sohan Lal, PW7 Vinod Kumar and PW11 Sukesh Kumar. All these witnesses have categorically stated that the tanker was at a high speed, it hit the pole and thereafter hit the deceased.

In fact, the petitioner has not denied the fact that the accident in question took place. The defence of he petitioner is that the accident took place due to the failure of brakes and reliance is placed on the report Ex.PW9/A given by the constable who had mechanically examined the tanker. A perusal of the report shows that the brake washer of the master cylinder had worn out and the brake was being applied when the brake pedal was pushed three times. However, PW9 has

clearly stated that this mechanical defect was already existing before the accident took place. He also clearly stated that this mechanical defect could not have appeared suddenly. He has also denied the suggestion that this defect occurred when the tanker was tried to be stopped suddenly.

The mechanical report clearly shows that the brake oil and brake pressure were in perfect order. There is no evidence that the petitioner even blew his horn while hitting the barrier. His speed can be visualized from the fact that he went through the iron pole of the barrier and continued moving about 25 – 30 ft ahead before coming to halt. The mechanical defect, if any, already existed and the petitioner should have been more careful.

Keeping in view all the aforesaid facts and after going through the entire evidence on record, I find that both the courts below have properly appreciated the evidence led before them. There is no infirmity or irregularity in the judgments of the courts below calling for interference in revisional proceedings. The revision petition is without any merit and the same is accordingly dismissed. Bail bonds furnished by the accused-petitioner are cancelled.

July 20, 2007 (Deepak Gupta),J

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